

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ARTURO TORRES OCHOA,

Plaintiff,

v.

ASHBY,

Defendant.

Case No. 3:15-cv-00113-MMD-WGC

ORDER

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On February 24, 2015, this Court issued an order denying Plaintiff's application to proceed *in forma pauperis* because Plaintiff had "three strikes" pursuant to 28 U.S.C. § 1915(g). (Dkt. no. 3 at 1-2.) The Court informed Plaintiff that if he did not pay the \$400.00 filing fee in full within thirty (30) days of the date of that order, the Court would dismiss the action without prejudice. (*Id.* at 2.) The thirty-day period has now expired and Plaintiff has not paid the full filing fee of \$400.00.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply

1 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*
2 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
3 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
4 for lack of prosecution and failure to comply with local rules).

5 In determining whether to dismiss an action for lack of prosecution, failure to
6 obey a court order, or failure to comply with local rules, the court must consider several
7 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
8 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
9 favoring disposition of cases on their merits; and (5) the availability of less drastic
10 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,
11 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

12 In the instant case, the Court finds that the first two factors, the public's interest in
13 expeditiously resolving this litigation and the Court's interest in managing the docket,
14 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
15 in favor of dismissal, since a presumption of injury arises from the occurrence of
16 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
17 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor —
18 public policy favoring disposition of cases on their merits — is greatly outweighed by the
19 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that
20 his failure to obey the court's order will result in dismissal satisfies the "consideration of
21 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
22 *Henderson*, 779 F.2d at 1424. The Court's order requiring Plaintiff to pay the full filing
23 fee within thirty (30) days expressly stated: "It is further ordered that this action will be
24 dismissed without prejudice unless Plaintiff pays the \$400.00 filing fee in full within thirty
25 (30) days of entry of this order." (Dkt. no. 3 at 2.) Thus, Plaintiff had adequate warning
26 that dismissal would result from his noncompliance with the Court's order to pay the full
27 filing fee within thirty (30) days.


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1 It is therefore ordered that this action is dismissed without prejudice based on
2 Plaintiff's failure to pay the \$400.00 filing fee in compliance with this Court's February
3 24, 2015, order.

4 It is further ordered that the motion to set a schedule to see an outside doctor
5 based on the quality of the prison food (dkt. no. 17) is denied.

6 It is further ordered that the Clerk of Court shall enter judgment accordingly.

7 DATED THIS 27th day of March 2015.

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10 MIRANDA M. DU
11 UNITED STATES DISTRICT JUDGE
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